

Parliament. The Peers of the realm are by their birth hereditary Counsellors of the Crown, and may be called upon for their advice, either in time of Parliament, or when no Parliament is in being: They are called in some law books Magnum Concilium Regis (the King's Great Council). It is also considered the privilege of every particular Peer to demand an audience of the King, and to lay before him any thing he may deem of public importance. The Judges, I presume, are called "a Council of the King," upon the same principle that the Parliament is, because the administration of justice is in his name, and the Judges are considered as his instruments in the distribution of it. We come now to the Privy Council, which I imagine, if Mr. Mason had any particular view towards England when he made this objection, was the one he intended as an example of a Constitutional Council in that kingdom. The Privy Council in that country is undoubtedly of very ancient institution, but it has one fixed property invariably annexed to it, that it is a mere creature of the Crown, dependent on its will both for number and duration, since the King may, whenever he thinks proper, discharge any particular member, or the whole of it, and appoint another.\*<sup>9</sup> If this precedent is of moment to us, merely as a precedent, it should be followed in all its parts, and then what would there be in the regulation to prevent the President being governed by "minions and favorites?" It would only be the means of riveting them on constitutional ground. So far as precedents in England apply, the Peers being constitutionally the Great Council of the King, though also a part of the legislature, we have reason to hope that there is by no means such a gross impropriety as has been suggested in giving the Senate, though a branch of the legislature, a strong control over the Executive. The only difference in the two cases is, that the Crown in England may or may not give this consequence to the Peers at its own pleasure, and accordingly we find that for a long time past this great Council has been very seldom consulted; under our constitution the President is allowed no option in respect to certain points wherein he cannot act without the Senate's concurrence. But we cannot infer from any example in England, that a concurrence between the Executive and a part of the legislative is contrary to the maxims of their government, since their government allows of such a concurrence whenever the Executive pleases. The rule, therefore, from the example of the freest government in Europe, that the Legislative and Executive powers must be altogether distinct, is liable to exceptions; it does not mean that the Executive shall not form a part of the Legislative (for the King, who has the whole Executive authority, is one entire branch of the legislature, and this Montesquieu, who recognizes the general principle, declares is necessary); neither can it mean (as the example above